

**IN RE INTER-POWER OF NEW YORK, INC.**

PSD Appeal Nos. 92-8 and 92-9

***FINAL ORDER***

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Decided March 16, 1994

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**Syllabus**

This action involves two petitions for review of a Prevention of Significant Deterioration ("PSD") permit issued by U.S. EPA Region II to Inter-Power of New York, Inc. ("Inter-Power") for the construction of three coal-fired fluidized bed boilers in Halfmoon, New York. The Commonwealth of Massachusetts and Concerned Citizens for the Environment, Inc. ("CCE") both petitioned for review of the permit. On April 7, 1993, the Board granted review of the permit determination because of the "importance and factual complexity" of the issues presented. The Board's order focused on the adequacy of Region II's Best Available Control Technology ("BACT") determination for sulfur dioxide ("SO<sub>2</sub>"). The Board deferred consideration of the other issues raised by the petitions for review. Thereafter, on June 10, 1993, CCE filed a motion to expedite review and deny the permit on the ground that Inter-Power intends to change the project for which it had been granted the permit and, therefore, the present permit is moot. Following a review of all responses, including the June 10 Motion, the Board on December 10, 1993, issued an Order to Show Cause requiring Region II to demonstrate why the Region's BACT analysis for SO<sub>2</sub> was consistent with EPA guidance and requiring Inter-Power to affirm its present commitment to proceed with the facility that is described in Inter-Power's permit application. The Board received responses to the Show Cause order in January 1994.

Held: First, CCE's June 10 Motion is denied. Inter-Power's PSD permit is not moot. Inter-Power has submitted an affidavit that affirms Inter-Power's commitment to proceed with the facility described in its PSD permit application. Therefore, the permit cannot be denied on the grounds that Inter-Power does not intend to proceed with constructing the facility, as permitted.

Second, Massachusetts and CCE have failed to demonstrate that Region II's BACT determination for SO<sub>2</sub> was clearly erroneous. At the heart of Massachusetts' and CCE's objections is the contention that the Region erred in rejecting the use of lower sulfur coal at the Halfmoon facility on cost-effectiveness grounds. Here, the Region correctly recognized that it was required to examine the use of cleaner forms of coal as part of the BACT analysis. The Region concluded, however, after an analysis of lower sulfur coal, that requiring Inter-Power to use coals below an average of 1.87% sulfur would not be cost-effective on the grounds that (1) the incremental cost-effectiveness of using lower sulfur coal demonstrated that the use of lower sulfur coal would impose a significant economic penalty and (2) a review of all other coal-fired fluidized bed facilities demonstrated that the Region's proposed 0.22 lbs/MMBTU emission limit for SO<sub>2</sub> was the lowest SO<sub>2</sub> emission limit for any such facility in the Northeast, save for one facility with a unique coal source and, therefore, the proposed limit reflected BACT. Although Massachusetts and CCE raise questions about the